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15 [Proposed] Co-Lead Counsel for Plaintiffs

16 UNITED STATES DISTRICT COURT

17 NORTHERN DISTRICT OF CALIFORNIA

18 SAN JOSE DIVISION

19 IN RE APPLE INC. STOCKHOLDER
 20 DERIVATIVE LITIGATION

) Lead Case No. 4:19-cv-05153-YGR
)
) (Consolidated with Cases No. 4:19-cv-05863-
) YGR, 4:19-cv-05881-YGR, and 4:19-cv-
) 08246-YGR)
)
) DECLARATION OF CRAIG W. SMITH IN
) SUPPORT OF MOTION OF PLAINTIFFS
) TERRENCE ZEHRRER, ANDREW FINE,
) TAMMY FEDERMAN SEP/IRA, AND THE
) ROSENFELD FAMILY FOUNDATION TO
) APPOINT ROBBINS LLP AND
) WEISSLAW LLP CO-LEAD COUNSEL

21 This Document Relates To:

22 ALL ACTIONS.

28 DECLARATION OF CRAIG W. SMITH IN SUPPORT OF MOTION OF PLAINTIFFS TERRENCE
 ZEHRRER, ANDREW FINE, TAMMY FEDERMAN SEP/IRA, AND THE ROSENFELD FAMILY
 FOUNDATION TO APPOINT ROBBINS LLP AND WEISSLAW LLP CO-LEAD COUNSEL

4:19-cv-05153-YGR

1 I, Craig W. Smith, hereby declare as follows:

2 1. I am an attorney duly licensed to practice before all of the courts of California. I was
 3 admitted to practice before this Court in 1996. I am the lead partner for Robbins LLP ("Robbins") on this
 4 matter. I submit this declaration in support of the Motion of Plaintiffs Terrence Zehrer, Andrew Fine,
 5 Tammy Federman SEP/IRA, and the Rosenfeld Family Foundation to Appoint Robbins LLP and
 6 WeissLaw LLP Co-Lead Counsel in the Consolidated Derivative Action.¹ I have knowledge of the matters
 7 stated herein and, should I be called upon, I could and would testify competently thereto.

8 2. My client, stockholder-plaintiff Terrence Zehrer, first purchased Apple stock in 2010,
 9 which he continues to hold.² He presently owns 900 shares.

10 3. My practice has focused on securities litigation and regulatory compliance for more than
 11 24 years. After graduating from Yale Law School in 1992, I spent ten and one-half years at O'Melveny
 12 & Myers LLP representing Fortune 500 companies in securities class actions, shareholder derivative
 13 actions, and SEC and SRO enforcement actions. After working for almost five years as Division Counsel
 14 at UBS Financial Services, Inc., I joined Robbins, where my practice has focused on shareholder
 15 derivative litigation. I have served as the firm's general counsel since 2011. See Firm Resume of Robbins
 16 LLP, attached hereto as Exhibit A.

17 4. Working from Robbins' well-developed litigation platform, I have secured a number of
 18 important recoveries for plaintiffs and the corporations we represent in derivative litigation involving
 19 issues substantially similar to those raised here.

20 5. For example, serving as lead counsel, I led the litigation and settlement efforts in a
 21 derivative action brought on behalf of Fifth Street Finance Corp. ("FSC"), a business development
 22 company plaintiffs alleged had been caused by its external manager to make reckless investments and

23 ¹ The Consolidated Derivative Action includes *Zehrer v. Cook, et al.*, 5:19-cv-0515; *Fine v. Cook, et al.*,
 24 5:19-cv-05863; *Bankhalter v. Cook, et al.*, 5:19-cv-05881; and *Votto v. Cook, et al.*, 5:19-cv-08246.

25 ² Unless otherwise noted, all capitalized terms herein shall have the same definition as set forth in the
 26 Motion of Plaintiffs Terrence Zehrer, Andrew Fine, Tammy Federman SEP/IRA, and the Rosenfeld
 Family Foundation to Appoint Robbins LLP and WeissLaw LLP Co-Lead Counsel; Memorandum of
 Points and Authorities in Support Thereof, filed herewith.

1 delay recognition of loan losses to boost the fees paid to the manager in the lead up to FSC's initial public
 2 offering. *In re Fifth Street Fin. Corp. S'holder Derivative Litig.*, Lead Case No. 3:15-cv-01795-RNC (D.
 3 Conn.). Robbins successfully coordinated the efforts of eight plaintiffs and ten plaintiffs' law firms across
 4 three jurisdictions, and negotiated a settlement that secured \$30 million in advisory fee reductions and
 5 comprehensive corporate governance, conflicts management, and internal controls reforms that markedly
 6 improved FSC's accounting and financial reporting environment and substantially reduced the risk that
 7 the conflicts inherent in its external management relationship could be exploited going forward.

8 6. I also played a leading role in shareholder derivative litigation brought on behalf of Career
 9 Education Corporation against officers and directors who plaintiffs alleged allowed its for-profit schools
 10 to falsify job placement and student loan repayment rates, fail to meet accreditation standards, and
 11 jeopardize its schools' access to the Title IV federal student loan funds that account for the lion's share of
 12 its revenues. *Alex v. McCullough*, No. 1:12-cv-08834 (N.D. Ill. Dec. 5, 2012). The Career Education
 13 derivative litigation spanned multiple jurisdictions and required the coordination of the strategies and
 14 efforts of six plaintiffs and nine plaintiffs' law firms across two jurisdictions. From my position as counsel
 15 for a plaintiff whose litigation demand had been wrongfully refused by the company's board of directors,
 16 I successfully coordinated with plaintiffs' counsel in related derivative actions filed in *Bangari v. Lesnik*,
 17 No. 1:11-CH-41973 (Ill. Cir. Ct.-Cook Cty. Dec. 11, 2011) and *Cook v. McCullough*, No. 1:11-cv-09119
 18 (N.D. Ill. Dec. 22, 2011) to negotiate a global settlement that secured a \$20 million recovery for the
 19 company, as well as industry-leading board and management-level governance and oversight reforms.

20 7. The Robbins team I led also played a leading role in complex, multi-jurisdictional
 21 derivative action brought on behalf of Avon Products, Inc., against officers and directors who plaintiffs
 22 alleged turned a blind eye to bribes made in violation of the Foreign Corrupt Practices Act to secure the
 23 first foreign direct sales license in China. *Pritika v. Jung*, No. 651479/2015 (N.Y. Sup. Ct. May 1, 2015).
 24 Related cases were filed by five plaintiffs and seven plaintiffs' counsel in three jurisdictions. After the
 25 related cases had been pending for years, I led the negotiations that resulted in Avon's agreement to adopt
 26
 27

1 a comprehensive corporate governance and compliance reform program that *The Wall Street Journal*
 2 praised as "a victory for shareholders looking for accountability from the business."³

3 8. I also played a key role in persuading Brocade Communication Systems, Inc.'s Board
 4 Special Litigation Committee to prosecute stock option backdating claims against former officers and
 5 directors of Brocade. *In re Brocade Commc'n Sys., Inc., Derivative Litig.*, No. 1:05-cv-041683 (Cal.
 6 Super. Ct.-Santa Clara Cty. Jan. 28, 2010). I was part of the four-lawyer team that met with the Special
 7 Litigation Committee and persuaded it to retain the firm as co-counsel and to pursue the claims. Brocade
 8 recovered tens of millions of dollars and extinguished its obligation to fund the criminal defense of its
 9 former CEO.

10 9. My track record is emblematic of the many successes Robbins has achieved for
 11 corporations in complex, often multi-jurisdictional shareholder derivative litigation. Robbins was
 12 instrumental in securing one of the largest settlements ever of an insider trading claim brought pursuant
 13 to *Brophy v. Cities Service Co.*, 70 A.2d 5 (Del. Ch. 1949). In *Martinez v. Toll*, No. 2:09-cv-00937-CDJ
 14 (E.D. Pa. Mar. 27, 2013), Robbins served as a lead member of the litigation team that pursued insider
 15 trading and other claims against the directors of luxury home builder Toll Bros., Inc. During four years
 16 of contentious litigation, Robbins engaged in extensive discovery, including taking the depositions of
 17 Robert and Bruce Toll, and led the settlement negotiations that resulted in a \$16.25 million cash payment
 18 for the company, including a \$6.45 million payment from the executive directors individually.

19 10. Robbins also served as lead counsel in *In re Cardinal Health Derivative Litigation*. There,
 20 after several years of litigation, in which the firm defeated numerous dispositive motions and completed
 21 extensive discovery, the firm negotiated a settlement that secured \$70 million for the company and
 22 comprehensive corporate governance reforms. And in *In re OM Group, Inc. Derivative Litigation*, No.
 23 1:03-CV-0020 (N.D. Ohio Nov. 10, 2005), Robbins was appointed sole lead counsel and ultimately
 24

25 ³ Stephen Dockery, *Avon Settles Bribery Suits, Agrees to Major Compliance Overhaul*, The Wall Street
 26 Journal (Apr. 14, 2016), <http://blogs.wsj.com/riskandcompliance/2016/04/14/avon-settles-bribery-suits-agrees-major-compliance-overhaul/?cb=logged0.19151580897742648>.

1 secured \$29 million for OM Group, Inc., termination of the company's long term CEO, the addition of
 2 two shareholder nominated directors, and significant corporate governance reforms.

3 11. In addition to the firm's extensive experience and long track record of success, Robbins
 4 has the personnel and information technology resources necessary to effectively pursue Apple's interests
 5 in this complex derivative action, which we expect will involve extensive fact and expert discovery,
 6 motion practice, and remedial investigation and analysis. Robbins employs seventeen (17) attorneys,
 7 including eight (8) partners with decades of experience in complex litigation, eight (8) associates, three
 8 (3) of whom have more than ten or more years of litigation experience, and three (3) staff attorneys. The
 9 firm is supported by ten (10) corporate research clerks who assist the attorneys with factual research,
 10 financial and technical analysis, and graphics support; six certified (6) paralegals, and twenty (20)
 11 information technology and litigation support staff.

12 12. Robbins also maintains superior document management and search engine capability,
 13 utilizing the Disco e-Discovery platform. With this powerful search engine and analytical features such
 14 as machine learning, e-mail conversation threading, duplicate detection, analytics, and clustering, the
 15 firm is able to quickly review and code large volumes of documents to ensure that its lawyers are able to
 16 quickly identify and evaluate important documents. This technology also allows Robbins to host large
 17 document review projects that allow multiple firms to access the documents.

18 13. I led negotiations among plaintiffs' counsel and with defense counsel regarding initial
 19 scheduling and case management, and secured agreement on the terms of the Stipulation and Proposed
 20 Order to Consolidate and Stay Related Actions and Setting Schedule on Motions for Leadership (ECF No.
 21 19), which set out terms for consolidating the related stockholder derivative actions pending before this
 22 Court; staying defendants' obligation to respond to the complaints pending the outcome of motions to
 23 dismiss the related securities actions; and set deadlines for plaintiffs to agree or to move for appointment
 24 of lead counsel for plaintiffs. The Court entered the proposed order pursuant to the stipulation on March
 25 11, 2020. ECF No. 20.

26 14. Thereafter, I led the negotiations among plaintiffs' counsel regarding a leadership structure

1 that would facilitate the effective representation of Apple's interests in the derivative claims, and capture
 2 the efficiencies promised by consolidation through effective coordination of litigation efforts and
 3 streamlined communications with the Court and defense counsel. I managed the communications among
 4 counsel, reduced proposals to decision points, and was ultimately able to secure the agreement of all but
 5 one—Alan Bankhalter—of six plaintiffs in the four cases to support the co-leadership proposed by this
 6 motion.

7 15. Attached are true and correct copies of the following exhibits:

8 Exhibit A. Robbins LLP Firm Resume

9 Exhibit B. Declaration of Justin A. Kuehn in Support of Motion of Plaintiffs Terrence
 10 Zehrer, Andrew Fine, Tammy Federman SEP/IRA, and the Rosenfeld
 Family Foundation to Appoint Robbins LLP and WeissLaw LLP Co-Lead
 Counsel

11
 12 I declare under penalty of perjury under the laws of the United States of America that the foregoing
 13 is true and correct. Executed this 14th day of April, 2020.

14 DATED: April 14, 2020

/s/ Craig W. Smith
CRAIG W. SMITH

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